Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

* * *

NO. 78-6

* * *

HILMAR G. MOORE, RAUL JIMENEZ, AND JAMIE CLEMENTS, INDIVIDUALLY AND AS CHAIRMAN AND MEMBERS, RESPECTIVELY, OF THE TEXAS BOARD OF HUMAN RESOURCES, ET AL.,

Appellants

vs.

JOHN PLEASANT SIMS AND WIFE, MARY CARTER SIMS, INDIVIDUALLY AND AS NEXT FRIENDS OF THEIR MINOR CHILDREN, SABRINA MARIE SIMS, PAUL EDWARD SIMS, AND SHAWANA EVETTE SIMS,

Appellees

* * *

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

* * *

VOLUME III

APPENDIX TO JURISDICTIONAL STATEMENT

* * *

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. _____

On Appeal From The United States District
Court For The Southern District Of Texas
Houston Division

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IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN PLEASANT SIMS AND WIFE, MARY CARTER SIMS, INDIVIDUALLY AND AS NEST FRIENDS OF THEIR MINOR CHILDREN SABRINA MARIE SIMS, PAUL EDWARD SIMS AND SHAWANA EVETTE SIMS,	)	
Plaintiffs,	)	
VERSUS	)	CIVIL ACTION NO.
RAUL JIMENEZ, JAMIE CLEMENTS AND HILMAR G. MOORE, INDIVIDUALLY AND AS CHAIRMAN AND MEMBERS, RESPECTIVELY, OF THE STATE BOARD OF PUBLIC WELFARE; RAYMOND VOWELL, INDIVIDUALLY AND AS COMMISSIONER OF THE TEXAS STATE DEPARTMENT OF PUBLIC WELFARE; GENE LEGE, INDIVIDUALLY	)	76-H-665

AND AS DIRECTOR OF THE HARRIS COUNTY CHILD WELFARE UNIT OF THE TEXAS STATE DEPARTMENT OF PUBLIC WELFARE; MARIAN LOCKELY, INDIVIDUALLY AND AS HEAD PROGRAM DIRECTOR OF THE MONTGOMERY COUNTY WELFARE UNIT OF THE TEXAS STATE DEPARTMENT OF PUBLIC WELFARE; AND ALL WITH THEM, PERSONS ACTING IN CONCERT OR COOPERATION OR AT THEIR DIRECTION,	)
Defendants.	)

PRETRIAL ORDER

. . .

Defendants' Statement of the Case:

On March 25, 1976, the State Department of Public Welfare received a report of physical abuse to Paul Sims, an eight year old student at an elementary school in Houston, Texas. Rex Downing, a welfare case worker, was assigned to go to the school in order to investigate. He was advised that the child had received a spanking from his father, John P. Sims, earlier in the day. Following an examination of Paul's injuries, which included bleeding from both buttocks, Downing arranged to have the boy and his sisters, who attended

the school, examined by a doctor at the Harris County Child Welfare Unit.

After examination, the physician, Dr. Marie Surgi, concluded that Paul Sims was a very badly bruised and abused child. His buttocks were found to have ulcerated skin in the center oozing blood. He had numerous bruises on other parts of his body. His sisters were also found to have bruises to a lesser extent.

In conversation, it was determined that Mrs. Sims had administered physical discipline to Paul the night before, on March 24, 1976. Teachers testified to the beating at school on March 25.

The Harris County Child Welfare Unit decided to take possession of the children in this emergency situation in order to protect them from danger to their health and physical safety. (Chapter 17, Texas Family Code, Sec. 17.01). This was accomplished by placing the children in a foster home until further investigation could be conducted.

The Harris County Child Welfare Unit then proceeded to file a Suit for Protection of Child in Emergency. This was done without notice to the parents, pursuant to Section 17.03 of the code. The suit asked that Gene Lege, Director, Harris County Child Welfare Unit be appointed temporary managing conservator of the Sims children, pending further investigation. This suit was filed on March 26, 1976, and a temporary order was issued on that day. All of this was done pursuant to Chapter 17, of the Family Code which authorizes such temporary orders for a period not to exceed ten days.

On March 26, 1976, the Sims retained an attorney, Gladys Goffney, to represent them in the proceedings regarding their children.

On March 31, 1976, Mrs. Goffney submitted a Motion to Modify the emergency order previously granted pursuant to Chapter 17 of the Family Code. Section 17.06 makes it mandatory upon the Court to conduct a hearing, if a parent, after notice to those involved in the original hearing, seeks to modify an emergency order granted under Chapter 17. For some reason, not satisfactorily explained, the clerk failed to accept and schedule the motion, and the attorney for the plaintiffs did not insist upon its being filed. Neither did the attorney for the plaintiffs seek a writ of mandamus requiring the clerk to accept the motion for filing and the judge to conduct a hearing pursuant thereto. Needless to say, such a hearing would have allowed the parents an opportunity to present their case fully within the first ten days after the granting of the original temporary order.

Instead of proceeding with the motion to modify, a remedy available under Chapter 17 of the Family Code, the attorney for the plaintiff filed a Petition for Writ of Habeas Corpus in the Juvenile Court of Harris County, Texas. Without alleging in specific terms the manner in which the children were "illegally confined and restrained" by Harris County Child Welfare, the Sims petitioned the Court to have the children brought immediately before the Court so that they might be returned to the Petitioners. The Court held a hearing and refused to grant the petition on April 5, 1976. No further action has been taken in the habeas corpus matter.

At the hearing on Petition for Writ of Habeas Corpus, the Juvenile Court was advised that the parents and children were residents of Montgomery County, Texas. The Juvenile Court of Harris County allowed the Harris County Child Welfare Unit until 5:00 P.M. on April 5 to file a proceeding under Chapter 11 and 14 of the

Family Code after which the matter would be transferred to Montgomery County. An Original Petition in Suit Affecting Parent-Child Relationship was filed and an ex parte temporary order in the nature of a temporary restraining order was issued pursuant to Section 11.11 of the Family Code. Further, the matter was transferred to the Juvenile Court of Montgomery County pursuant to Section 11.06 of the Family Code. At this time, Paul Sims was in the hospital recovering from the physical abuse inflicted upon him by his parents. It was the feeling of the Harris County Child Welfare Unit that the children should not be returned to the parents until the parents had an opportunity to attend counseling. The judge agreed.

On April 6, 1976, after the temporary order pursuant to Section 11.11 was signed, the Juvenile Court of Harris County was unable to set a time for a hearing in Montgomery County on temporary injunction as required by Section 11.11(b) of the Family Code, and Rules 680 and 681, Texas Rules of Civil Procedure. Therefore, at the time of transfer of all papers to the Juvenile Court of Montgomery County, a temporary order was in effect, due to expire within 10 days from April 5, 1976, unless continued as provided in Rules 680 and 681, Texas Rules of Civil Procedure. This order provided that immediate temporary conservatorship be placed in Gene Lege, Director of the Harris County Child Welfare Unit, with respect to the three Sims children. However, the order did not state, on its face, that it was an ex parte order or that it was to expire in 10 days.

On April 9, 1976, the file in the Sims case was received by the Juvenile Court of Montgomery County, Texas. The order signed by Judge Robert L. Lowry, Juvenile Judge of Harris County, was evidently treated as a preliminary injunction, rather than as a temporary

restraining order by Judge Coker of the Juvenile Court of Montgomery County, Texas. Consequently, no hearing on a temporary injunction was set nor was any service of process issued. The attorney for the Sims did not seek to have such a hearing set down or to obtain a writ of mandamus requiring one to be held.

Instead of the plaintiff seeking a full evidentiary hearing on the merits, on April 20, 1976, this cause was filed in United States District Court. At a hearing on May 5, 1976, the Court found that the Sims children were not in the legal possession of the Harris County Child Welfare Unit. Due to the expiration of the temporary restraining order, issued ex parte under Section 11.11 of the Family Code, this Court issued an order returning the children to the custody of their parents.

In taking action to return the Sims children to the custody of their parents on May 5, 1976, this Court advised the State Department of Public Welfare and its attorneys that the State was not enjoined from taking action under state law to properly establish a temporary conservatorship in the State Department of Public Welfare.

On May 14, 1976, the State Department of Public Welfare sought, once again, to protect Paul Sims by filing another "Suit Affecting the Parent-Child Relationship" in the Juvenile Court of Montgomery County, Texas.

The Court was asked to appoint Helen Jurries, Supervisor, State Department of Public Welfare, as Managing Conservator of Paul Sims. On May 14, 1976, Judge Coker signed a show cause order with writ of attachment which ordered Paul Sims delivered to Mr. and Mrs. James Carter, the grandparents by adoption of Paul Sims, and naming them temporary managing

conservator of Paul Sims. The court set a hearing for May 21, 1976, at which the continuation of the temporary conservatorship was to be considered. Despite several efforts to serve this writ, the Sims were not served and the date for the hearing was changed to June 10, 1976.

On May 21, 1976, the Plaintiffs filed an application for temporary restraining order seeking to halt state court proceedings. A temporary restraining order was granted, ex parte, on May 21, 1976. A hearing was held on June 7, 1976, at which time an order was issued restraining any further proceedings in state court, pending final adjudication on the merits herein.

Instead of leaving this suit in state court, where all constitutional and substantive questions in this matter could be adjudicated, this Court is faced with a challenge to a state statute, formulated after several years of careful consideration. The plaintiffs, thus far, have been allowed to escape any carefully considered presentation of the merits of the child abuse questions herein. Further, the seek to completely nullify all of the provisions of Chapters 11, 14, 15, 17 and 34 of Title II of the Texas Family Code.

The Defendants, if necessary, will fully support the reasonableness, compelling state interest, and constitutionality of the Family Code provision challenged herein.

II. DEFENDANTS CONTEND THAT:

The Defendant agents and employees of the State Department of Public Welfare claim that local welfare workers acted in good faint to protect the best interest of the children, Paul, Shawana and Sabrina Sims, by seeking valid judicial orders in Harris and Montgomery Counties to create a temporary managing conservatorship and give the managing conservator temporary custody of the children. This occurred after evidence of severe physical abuse was found, for which both parents have some responsibility. The defendants acknowledge that the children were kept in foster homes after a temporary order under Chapter 11 had expired. However, the parents, who retained an attorney shortly after the children were taken from the home were remiss in failing to insist on their right to file a motion to modify the order of the Harris County Court and to have an evidentiary hearing on the same. Likewise, they failed to insist upon their right to a hearing from the State Court in Montgomery County. The Defendants would further show that, while there may have been a failure to comply with one aspect of the Texas Family code, the Code is constitutional on its face and there is a compelling state interest to allow quick and effective emergency removal of children from homes where child abuse occurs.

ADMISSIONS OF FACT

PLAINTIFFS AND DEFENDANTS LIST THE FOLLOWING FACTS THAT HAVE BEEN STIPULATED AND ADMITTED AND WHICH WILL REQUIRE NO PROOF:

1. On March 25, 1976, adult and minor plaintiffs maintained a residence located at Route 3, Box 1304, Conroe, Montgomery County, Texas.

2. On March 25, 1976, the three minor plaintiffs were enrolled in and regularly attending classes at John G. Osborne Elementary School in Houston, Harris County, Texas, for which adult minor plaintiffs paid a monthly tuition charge to the Houston Independent School District.

3. Minor plaintiffs Sabrina Marie Sims, the only natural born child of adult plaintiffs, was born to them August 16, 1967, and is now age nine years.

4. Minor plaintiff Paul Edward Sims was born December 10, 1967, is now age eight years, and was adopted by adult plaintiffs through Harris County Child Welfare Unit (hereafter referred to as Child Welfare) pursuant to Decree of Adoption granted July 18, 1974, by Robert L. Lowry, Judge of the Juvenile Court of Harris County, Texas (hereafter referred to as Juvenile Court).

5. Minor plaintiff Shawana Evette Sims was born March 2, 1969, is now age seven years, and was adopted by adult plaintiffs through Child Welfare pursuant to Decree of Adoption granted by Judge Lowry on August 12, 1975.

6. On March 25, 1976, in response to a telephone report of child abuse made by personnel of John G.

Osborne Elementary School regarding only the minor plaintiff Paul Edward Sims, Child Welfare's agent and employee Caseworker Rex Downing went to the school.

7. That Casewarker (sic) Downing who went to the school March 25, 1976, to make investigation interviewed the minor plaintiff Paul Edward Sims who had been the subject of the telephone report of abuse for "Maybe a couple of minutes, three minutes."

8. That Rex Downing took possession and control of Paul Edward Sims, Shawana Evette Sims and Sabrina Marie Sims on March 25, 1976.

9. That Harris County Child Welfare did not physically deliver the three minor plaintiffs to the Court on March 25, 1976, nor were they delivered to the Court at any time prior to April 4, 1976. On April 5, 1976, minor plaintiffs were delivered to the Juvenile Court of Harris County pursuant to Subpoena for Writ of Habeas Corpus.

10. The following day, March 26, 1976, at 4:54 P.M., Betsy C. Conner filed a Suit For Protection of Child in Emergency pursuant to provisions of Chapter 17, Title 2, Texas Family Code, which was docketed under Cause No. 38,295 in the Juvenile Court Number One of Harris County, Texas, and in which all three minor plaintiffs were made subjects of suit.

11. No names of places of residence of the parents or persons responsible for the care of the three minors appears at any place in the suit referred to in paragraph 10, supra, although the Petitioner therein requests "that citation and notice be issued to all persons named."

12. Six minutes after time of filing of such suit and at 5:00 P.M. on March 26, 1976, Judge Robert L. Lowry of the Harris County Juvenile Court entered an Ex Parte Order by the terms of which Gene Lege, Director of Harris County Child Welfare was made temporary managing conservator of the three minor plaintiffs.

13a. On its face such Ex Parte Order recited that the matter was presented to the Court in chambers, without notice to or hearing afforded the adult plaintiffs.

13. No notice, citation or process of any kind was ever issued or served upon the adult plaintiffs in connection with the suit docketed as Cause No. 38,295 filed March 26, 1976.

14. (There is a marginal note at this point which reads *"Plaintiffs contested issue of fact."*) On March 31, 1976, counsel for the adult plaintiffs filed a Motion To Modify Temporary Orders For Emergency Protection Of Child with attached proposed Order Modifying Temporary Orders. Both instruments were stamped "JUV" by the Clerk of the Juvenile Court but were returned to counsel for adult plaintiffs by the Clerk who testified in a hearing before Honorable John V. Singleton on May 5, 1976 at Pg. 75 of the transcript, "Well, with the absence of Judge Lowry, I had taken to Judge Coe, and Judge Coe said he did not want to intervene in any of Judge Lowry's orders that he'd already signed in a case and he's rather for Judge Lowry to see this and he did bring it to my attention to file a Writ of Habeas Corpus in the District Clerk's office."

15. On March 31, 1976, counsel for adult plaintiffs filed a Petition for Writ of Habeas Corpus seeking return

of the three minor plaintiffs, which suit was docketed as Cause No. 1,069,341 in the Juvenile Court Number One of Harris County, Texas, and upon which a hearing was set for April 5, 1976, at 10:30 A.M., at which time the minor plaintiffs were delivered to the Court pursuant to Subpoena for Writ of Habeas Corpus upon Gene Lege.

16. Adult plaintiffs caused notice of the filing of their Petition For Writ of Habeas Corpus and of the hearing set thereon to be served upon Gene Lege, Director of Harris County Child Welfare and also issued Subpoenas for attendance of witnesses.

17. On the date and at the time scheduled for hearing on the Petition For Writ of Habeas Corpus, Judge Lowry determined that all of the Plaintiffs were residents of Montgomery County, Texas.

18. Upon such determination and without receiving evidence, the Court ruled it did not have power to hear the Habeas Corpus proceeding, although Judge Lowry had personal knowledge that the three minor plaintiffs were restrained in Harris County, Texas, by virtue of his own Ex Parte Order entered March 26, 1976.

19. The Docket Sheet entry made in Cause No. 1,069,341 in the handwriting of Robert L. Lowry, Judge of the Juvenile Court Number One of Harris County, Texas, on April 5, 1976, reads as follows: "Venue in Montgomery County - Case transferred to Montgomery County."

20. Later and at 4:47 P.M. on April 5, 1976, Betsy C. Conner filed a second suit in Cause No. 38,295 on the docket of the Juvenile Court Number One of Harris County, Texas, entitled Original Petition In Suit Affecting The Parent-Child Relationship.

21. At a time subsequent to the 4:47 filing of the Original Petition referred to in Paragraph 20, supra, but still on April 5, 1976, Judge Lowry entered a second Ex Parte Order continuing temporary managing conservatorship, possession and control of the three minor plaintiff (sic) in Gene Lege, Director, Harris County Child Welfare.

22. This second Ex Parte Order setting both temporary and final hearings in the second suit shows them both to be set for "the ___ day of _____, 19__ at ____ O'clock __.M." and appoints "An attorney _____. . .to serve as guardian ad litem and attorney ad litem and represent the minor child(ren) at all hearings. . . ". On its face this same Order recites it was presented to the Court in chambers.

23. On May 5, 1976, at a hearing in the Federal Court, there was testimony adduced that the blanks appearing in the Order had never been filled in.

24. On April 6, 1976, Docket Sheet entries made in the handwriting of Judge Lowry show the Suit Affecting the Parent-Child Relationship (Cause No. 38,295) and the Habeas Corpus proceeding (Cause No. 1,069,341) were transferred to the Juvenile Court of Montgomer (sic) County, Texas while the minor plaintiffs remained in Harris County in the possession of Harris County Child Welfare.

25. On April 9, 1976, the full file in Cause No. 38,295 transferred by the Juvenile Court Number One of Harris County, Texas, was received by the Juvenile Court of Montgomery County, Texas and docketed under Cause No. 3,030.

26. From April 6, 1976, when the file was received by the Montgomery County Juvenile Court up to and

including May 5, 1976, the first date of hearing before this Court, no notice, citation or process of any kind was issued or served upon the adult plaintiffs in Cause No. 3,030 nor were they afforded opportunity for hearing before the Juvenile Court of Montgomery County, Texas.

27. The three minor plaintiffs remained in the possession and control of Harris County Child Welfare during such period referred to in item 26, supra.

28. On May 4, 1976, still seeking return of their children, adult plaintiffs filed an Application For Leave To File Writ Of Habeas Corpus in the Court of Civil Appeals, 14th Supreme Judicial District of Texas, sitting in Houston. Such application was denied by the Court for lack of jurisdiction on May 4, 1976.

29. Plaintiffs' First Complaint was filed with the Federal Court on April 19, 1976.

30. Nine days after this Court ordered return of the minor plaintiffs, a third suit was begun by the filing of an Original Petition In Suit Affecting the Parent-Child Relationship which was docketed as Cause No. 3,090 in the Juvenile Court of Montgomery County, Texas, on May 14, 1976.

31. The suit filed in Montgomery County on May 14, 1976, referred to in Paragraph 30, supra, pertained only to the minor plaintiff Paul Edward Sims and had attached as an Exhibit the identical Exhibit attached to the suit filed March, 26, 1976, in Harris County, Texas, under Cause No. 38,295.

32. Based upon medical information and other information which was fifty (50) days old, Ernest

Coker, Sr., Judge of the Juvenile Court of Montgomery County, Texas issued an Ex Parte Writ of Attachment for the minor plaintiff Paul Edward Sims on May 14, 1976.

33. On May 21, 1976, counsel for plaintiffs made application for and Honorable John V. Singleton, Jr. entered a Temporary Restraining Order which was followed by and (sic) Order of Preliminary Injunction of this three-judge court entered June 18, 1976, restraining and enjoining defendants from filing or prosecuting any state suit based upon the state statutes to which plaintiffs have lodged this constitutional challenge.

34. This three-judge Court found "irreparable harm and injury to Plaintiffs: 1) by the very fact that in the initial proceeding initiated by the State the plaintiffs' family unit was disrupted for a total or (sic) forty-two (42) days without any type of relief afforded to plaintiffs; and 2) if the defendants were allowed to initiate further proceedeings plaintiffs would be placed in a similar situation as they had been prior to obtaining Federal Court relief."

35. That Raymond Vowell, Commissioner, State Department of Public welfare has answered by Interrogatory No. 10 that "the source of the CANRIS report has been deleted in accordance with Sec. 34.08 of the Texas Family Code."

36. That on or about April 7, 1976, and before the May 5, 1976, hearing in Federal Court, that Rex Downing as caseworker for the Harris County Child Welfare Unit knew or had cause to know of Paul Sims' statements that "his teacher Mrs. Rhea had spanked him on March 25, 1976, at the John G. Osborne Elementary School".

37. That Rex Downing, Harris County Child Welfare Worker recommended Termination of the Paren (sic)-Child Relationship between the Sims and Paul Edward Sims.

38. Information gathered by Harris County Child Welfare in the course of adoption of the minor plaintiffs Paul Edward Sims and Shawana Evette Sims by the adult plaintiffs in 1974 and 1975 was used by Harris County Child Welfare in this present matter.

39. That the State Department deleted the word 'masturbated' from the hand written notes of Dr. Marie Surgi attached to Section 17.01 Suit for Protection of Child in Emergency and filed in Juvenile Court March 26, 1976.

40. On March 27, 1976, Paul Edward Sims was admitted to St. Joseph's Hospital where he remained as a patient until April 7, 1976.

41. Child abuse occurs in homes at all socio-economic levels.

42. Child abuse patterns may require an emergency removal of the child from its home in order to protect its physical health and safety.

43. John and Mary Sims utilize a board paddle and a belt as a means of discipline (sic) for their chidren (sic). (Plaintiffs object as to relevancy.)

44. On the evening of March 24, 1976, Paul Edward Sims was spanked by his mother, Mrs. Mary Sims. (Plaintiffs object as to relevancy.)

45. On the morning of March 25, 1976, Paul Edward Sims was paddled with a board paddle at school by his father, John Pleasant Sims. (Plaintiffs object as to relevancy.)

46. Mr. & Mrs. Sims have a combined income of over $32,000. (Plaintiffs object as to relevancy.)

47. Counseling and therapy can assist many perpetrators of child abuse (Plaintiffs object as to relevancy)

PLAINTIFFS

CONTESTED ISSUES OF FACT

1. That Rex Downing took possession and control of the three minor plaintiffs Paul Edward Sims, Sabrina Marie Sims and Shawana Evette Sims shortly after 1:30 P.M. on March 25, 1976, and caused all three to be transported to the Child Welfare Clinic at 4040 Milam, Houston, Harris County, Texas.

2. (There is a marginal note at this point which reads *"Defendant's admit this fact."*) No Writ of a magistrate was obtained by Rex Downing prior to his taking possession and control of the three minor plaintiffs. (State Department Objects On Relevancy.)

3. The only notice given to adult plaintiffs of the seizure of their children was be (sic) a telephone call to John Pleasant Sims on his job by the school principal.

4. The first hearing afforded plaintiffs after seizure of the three minor plaintiffs on March 25, 1976, was that of May 5, 1976, before Honorable John V. Singleton, Jr. who ordered return of the three minor plaintiffs to the adult plaintiffs.

5. The names of all the plaintiffs now appear as perpetrators and/or victims of child abuse in a

Central Registry by the Texas State Department of Public Welfare in Austin, Texas, by two separate incidents: March 25, 1976 (the date of initial seizure of the three minor plaintiffs) and May 5, 1976 (the date on which minor plaintiffs were ordered restored to adult plaintiffs by this Court), although no judicial finding of any such abuse has been made.

6. That John Pleasant Sims and Mary Carter Sims were required by the Harris County Child Welfare Department to attent (sic) counseling sessions under Doctors Blair and Rita Justice at the Southwest Institute for Group and Family Therapy.

Defendants' Contested Issues of Fact

1. The doctor who examined Paul Sims on March 25, 1976 concluded that Paul was a physically abused child.

2. On March 25, 1976, Rex Downing reached a reasonable conclusion that John and Mary Sims were responsible for the physical injuries to Paul Sims.

3. On March 25, 1976, Rex Downing reached a reasonable conclusion that the health and physical safety of Paul Sims was threatened.

4. Rex Downing acted under the Family Code in good faith in making decisions concerning Paul Sims.

5. On March 25, 1976, the doctor who examined Shawana and Sabrina Sims found bruising on the buttocks of both children.

6. On March 25, 1976, Rex Downing reached a reasonable conclusion that John and Mary Sims were responsible for the bruising on Shawana and Sabrina Sims.

7. Rex Downing acted under the Family Code in good faith in making decisions and recommdnations (sic) concerning Sabrina and Shawana Sims.

8. On March 27, 1976, Paul Sims was admitted to the hospital as a result of injuries sustained from physical punishment administered by his parents on March 24 and 25, 1976.

9. Gene Lege, Director of Harris County Child Welfare Unit, is appointed managing conservator in all cases involving child abuse arising in Harris County, where court proceedings ensue.

10. Gene Lege had a de minimus contact with the case involving the Sims children.

11. Gene Lege acted in good faith in the minimal contacts he had with the Sims case.

12. All agents and employees of the State Department of Public Welfare who are defendants in this cause acted in good faith and in the interest of the welfare of the Sims children during the course of actions taken under the Family Code herein.

13. Child abuse is a significant social problem in Texas.

PLAINTIFFS (sic) EVIDENCE

1. Petition in Cause No. 38,295, 'Suit for Protection of Child in Emergency', pursuant to Chapter 17, Texas Family Code.

2. Petition in Suit Affecting Parent-Child Relationship, Cause No. 38,295.

3. 'Show Cause Order' in Suit Affecting the Parent-Child Relationship, Cause No. 38,295.

4. Subpoena for witness in Cause No. 1,069,341, Brooks.

5. Subpoena for witness in Cause No. 1,069,341, Rhea.

6. Subpoena for witness in Cause No. 1,069,341, Mertens.

7. Subpoena for witness in Cause No. 1,069,341, Mrs. Melvin Jones.

8 & 10. Petition, Order For Hearing, and Order of Writ of Habeas Corpus in Cause No. 1,069,341. Sheriff's service of writ upon Gene Lege.

9. Docket sheet in Cause No. 1,069,341.

11, 12 & 13. Central Record Files showing that the minor plaintiffs had not been the subjects of a suit affecting the parent-child relationship, dated April 14, 1976.

14. Letter, showing Instruments transferred from Juvenile Court of Harris County, Texas to the Juvenile Court of Montgomery County, Texas.

15. Order of Transfer in Cause No. 38,295, Order in Suit For Protection of Child in Emergency.

16. Cause No. 3,030, from Juvenile Court of Montgomery County, Texas, showing receipt of Cause No. 38,295 from Harris County, Texas.

17. Docket Sheet in Cause No. 38,295.

18. Motion to Modify in Cause No. 38,295.

19. Order to Modify in Cause No. 38,295.

20. Letter from the 14th Court of Civil Appeals denying Relator's motion for leave to file petition for writ of habeas corpus for lack of jurisdiction.

20a. Complete file from 14th Court of Civil Appeals regarding the Sims.

21. Cause No. 3,090, 'Suit Affecting the Parent-Child Relationship as to minor plaintiff, Paul Edward Sims, filed in the Juvenile Court of Montgomery County, Texas, on the 14th day of May, 1976.

22. Ex Parte Writ of Attachment for Paul Edward Sims, issued on the 14th day of May, 1976, by Judge Ernest A. Coker.

22a. Docket Sheet in Cause No. 3,090, Montgomery County, Texas.

23. Temporary Restraining Order issued by Judge John V. Singleton on the 21st day of May, 1976.

24. Order of Preliminary Injunction, entered by the Three-Judge Panel on the 18th day of June, 1976.

25. Texas Department of Public Welfare 'CANRIS REPORT' incident number A061353, involving all the plaintiffs, showing date abuse occurred as 3/25/76.

26. Texas Department of Public Welfare 'CANRIS REPORT' showing date abuse occurred as 5/05/76.

27. CANRIS REPORTS, bearing deletions, same as numbers A061353 and A066060, attached to Raymond Vowell's answer to Interrogatory No. 10.

28. Dr. Maire (sic) Surgi's hand written narrative report, regarding the minor plaintiffs, received from the State Department on or about September 2, 1976.

29. Dr. Marie Surgi's hand written narrative report regarding all plaintiffs, and letter from Jan Connerman, counsel for Dr. Surgi, received October 2, 1976.

30. Hospital records from St. Joseph's Hospital of Paul Edward Sims, from March 27 through April 7, 1976. (Stipulated)

31. Duplicate Card, showing Mrs. Rhea's report of paddling of Paul Edward Sims.

32. Article Four, Sections 473.100, 473.120 and 473.130 of Houston Independent School District Procedures, and Houston Independent School Reporting For for (sic) Child Abuse and Neglect.

33. Transcript of Zoe Martin.

DEFENDANTS (sic) EVIDENCE

1. Case notes of Rex Downing on the Sims family from March 25, 1976 through May 10, 1976. (Stipulated)

2. Medical records of Dr. Marie Surgi on the Sims children on March 25, 1976. (Stipulated)

3. Medical records of Dr. Jesus Diaz on Paul Sims from March 27, 1976, through April 7, 1976. (Stipulated)

4. Hospital records on admission of Paul Sims to St. Joseph's Hospital from March 27, 1976, through April 7, 1976. (Stipulated)

5. Psychological Evaluation by Comprehensive Series for Education (Ann Stanton) of Paul Edward Sims done on May 4, 1976. (Affidavit)

6a, b & c. Photographs of Paul Edward Sims' injuries taken by Rex Downing at Harris County Child Welfare on March 25, 1976.

7. Two photographs of Paul Edward Sims' injuries taken by Houston Police officer R.G. Hickman at St (sic) Joseph's Hospital on March 27, 1976.

8. Records of counseling by Dr. Blair Justice.

9. Records of counseling by Dr. E. E. Johnstone. (Stipulated)

10. Statistical Summaries of Incidents of Child Abuse in Texas.

11. Illustrative material on child abuse.

WITNESSES

PLAINTIFFS WOULD CALL THE FOLLOWING WITNESSES:

1. JOHN PLEASANT SIMS, Rt. 3, Box 1304, Conroe, Texas. Adult plaintiff; will testify as to the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

2. MARY CARTER SIMS, Rt. 3, Box 1304, Conroe, Texas. Adult plaintiff; will testify as to the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

3. SABRINA MARIE SIMS, Rt. 3, Box 1304, Conroe, Texas. Minor plaintiff; will testify as to her knowledge of the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

4. PAUL EDWARD SIMS, Rt. 3, Box 1304, Conroe, Texas. Minor plaintiff; will testify as to his knowledge of the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure. Paul will also testify that his teacher, Mrs. Theresa Rhea, paddled him along with other classmates on March 25, 1976, at a time after his father John Sims had left the school.

5. SHAWANA EVETTE SIMS, Rt. 3, Box 1304, Conroe, Texas. Minor plaintiffs will testify as to her knowledge of the seizure of the minor plaintiffs on March 25, 1976, and events following such seizure.

6. ZOE MARTIN, Deputy Clerk, Juvenile Court, Harris County Family Law Center. Will bring records and testify thereto of Case Numbers 38,295 and 1,069,311 involving all plaintiffs filed in the Juvenile Court, Harris County, Texas. (Transcript).

7. R. J. GRAY, Deputy Clerk, Montgomery County District Court, Conroe, Texas. Will bring all records and testify thereto of Case Numbers 3,030 and 3,090 involving all plaintiffs filed in the Juvenile Court, Montgomery County, Texas. (Stipulated).

8. ROBERT LOWRY, Judge, Juvenile Court, Harris County, Texas. Will testify to all court proceedings involving all plaintiffs filed in the Juvenile Court of Harris County, Texas. (Subpoena).

9. CAROL JONES, 1700 North Loop East, Houston, Texas. Will testify that she is the Petitioner in Cause No. 3,090 involving minor plaintiff Paul Sims, filed in the Juvenile Court of Montgomery County, Texas. (Adverse Witness). (Stipulated).

10. REX DOWNING, 2913 Louisiana, Houston, Texas.Mr. Downing will testify that he recommended termination of the parent-child relationship as to Paul Sims and the adult plaintiffs. (Adverse witness).

11. GLORIA JONES, 800 Ringold Street, Houston, Texas. Will testify as to her knowledge of the condition of the minor plaintiffs on March 25, 1976, and her participation in report of child abuse, and events following thereafter. (Adverse Witness).

12. THERESA J. RHEA, 1212 Nashau Street, Houston, Texas. Paul Sims' teacher on March 25, 1976. (Adverse Witness).

13. DR. EULA FAYE PERRY, 3502 Liberty Road, Houston, Texas. Dr. Perry will testify about her examination and treatment of the Sims children after March 25, 1976. (Stipulated).

14. INEZ HARRIS, 800 Ringold Street, Houston, Texas. School nurse; will testify as to her participation in treating Paul Sims on March 25, 1976 and May 10, 1976.

21. RAYMOND VOWELL, Commissioner of the State Department of Public Welfare of the State of Texas, with offices in Austin, Travis County, Texas. (Adverse Witness).

DEFENDANTS WOULD CALL THE FOLLOWING WITNESSES:

1. REX DOWNING, 2913 Louisiana, Houston, Texas. Mr. Downing will testify about the casework he did concerning the Sims family. (Stipulated).

2. DR. MARIE SURGI, 4040 Milam, Houston, Texas. Dr. Surgi will testify about her knowledge of Paul Sims' injuries on March 25, 1976, including the paddling administered by Mr. John Sims. (Stipulated).

3. THERESA RHEA, Osborne Elementary School, 800 Ringold, Houston, Texas. Ms. Rhea will testify about her knowledge of Paul Sims' injuries on March 25, 1976, including the paddling administered by Mr. John Sims.

4. DR. JESUS DIAZ, Suite 1116, St. Joseph Professional Building, 2000 Crawford, Houston, Texas. Dr. Diaz will testify about the medical condition of Paul Sims from March 27, 1976 through April 7, 1976. *(Stipulated)*

5. DRS. BLAIR & RITA JUSTICE, 5925 Kirby Drive #221, Houston, Texas. Drs. Justice will testify about the psychological condition of Mr. and Mrs. Sims.

6. DR. E.E. JOHNSTONE, 1300 Moursund, Houston, Texas. Dr. Johnstone will testify about the need of Mr. and Mrs. Sims for continued conseling on their parenting skills. (Stipulated).

7. DR. EULA FAYE PERRY, 3502 Liberty Road, Houston, Texas. Dr. Perry will testify about her examination and treatment of the Sims children after March 25, 1976. *(Stipulated)*

8. JUANA FALCON, 1300 Moursund Street, Houston, Texas. (TRIMS). Medical Records Clerk.

9. MS. BOBBIE MATTHEWS, John H. Reagan Building, Austin, Texas. Ms. Matthews will testify regarding data about child abuse in Texas.

10. MS. KAY LOVE, John H. Reagan Building, Austin, Texas. Ms. Love will testify regarding data about child abuse in Texas.

11. DR. JOAN HEBELER, 207 Barracuda, Galveston, Texas. Dr. Hebeler will testify about the medical aspects of child abuse.

12. DR. AUGUST R. TAROSI, 1203 Missouri, Houston, Texas. Dr. Tarosi will testify about the Comprehensive Services for Education Psychological Evaluation of Paul Sims.

EXPERT WITNESS
SUMMARY OF QUALIFICATIONS

NAME: Joan Rochelle Hebeler, M.D. DATE: October 19, 1976

PRESENT POSITION AND ADDRESS:

Associate Professor
Department of Pediatrics
University of Texas Medical Branch
Galveston, Texas 77550

BIOGRAPHICAL:

Birth Date:	April 30, 1934
Birth Place:	Independence, Missouri
Marital Status:	Single
Home Address:	207 Barracuda Galveston, Texas 77550

EDUCATION:

1955	B.A., University of Wisconsin, Madison, Wisconsin
1958	M.D., University of Wisconsin, Madison, Wisconsin
1958-59	Internship, Rotation, University of Texas Medical Branch, Galveston, Texas
1959-61	Resident, Department of Pediatrics, University of Texas Medical Branch, Galveston, Texas
1961-62	Chief Resident, Director of Pediatrics; Fellow (6 months in Pediatric Cardiology and 6 months in Pediatric Menatology), University of Texas Medical Branch, Galveston, Texas
Aug. 1962	Fellow in Child Development, University of Texas
June 1963	Medical Branch, Galveston, Texas

MEMBERSHIP IN SCIENTIFIC SOCIETIES:

American Academy of Pediatrics
Child Development, American Academy of Pediatrics, Member
American Medical Association
Texas Medical Association
Texas Pediatric Society
Galveston County Medical Society
Ambulatory Pediatric Association
Chairman of Committee Adoption and Dependent Care - Texas Academy of Pediatrics, 1976

ADDITIONAL INFORMATION:

1964 - Certified by American Board of Pediatrics
Fluent in Spanish

APPENDIX L

LIST OF STATES' CANRIS STATUTES FROM TRENDS IN CHILD ABUSE AND NEGLECT REPORTING STATUTES REPORT NO. 95 EDUCATION COMMISSION OF THE STATES CHILD ABUSE PROJECT

TRENDS IN CHILD ABUSE AND NEGLECT REPORTING STATUTES

Report No. 95

From the ECS Child Abuse Project

Education Commission of the States
Denver, Colorado 80295
Warren G. Hill, Executive Director

January 1977

Additional copies of this report may be obtained from the Education Commission of the States, 300 Lincoln Tower 1860 Lincoln Street, Denver, Colorado 80295 (303) 893-5200
For each report send $2.00. This price includes postage and handling. Prepayment required.

APPENDIX B

STATE REPORTING STATUTES

State	Last Amended	Citation
Alabama	1975	ALA. CODE tit. 27 sec. 20-25 (1975 Interim Supp.)
Alaska	1971	ALAS. STAT. 47.17.010 - .070; (1975 Cum. Supp.)
Arizona	1970	ARIZ. REV. STAT. sec. 8-546 - 8-546.04; 13-842.01 (1975 Supp.)
Arkansas	1975	ARK. STAT. ANN. sec. 42-807 - 42-818 (1975 Cum. Supp.)
California	1974	CAL. PENAL CODE sec. 11110; 11160.0-11162; HEALTH AND SAFETY CODE sec. 306.6; WELF. AND INSTITUT. CODE sec. 18950-18962 (1975 Cum. Supp.)
Colorado	1975	COLO. REV. STAT. ANN. sec. 19.10-101-19.10-115 (1975 Cum. Supp.)
Connecticut	1975	CONN. GEN. STATS. ANN. sec. 17-38a-17-38e (1975 Cum. Supp., as amended by PA 76-27, 1976)
Delaware	1971	DEL. CODE ANN. tit. 16, sec. 901-909, (1975 Cum. Supp., as amended by HB 1111, 1976)
District of Columbia	1966	D.C. CODE sec. 2-161-20166; 16-2301(9), (1973 Edition)
Florida	1975	FLA. STAT. ANN. sec. 827.07 (1-13) (1975 Cum. Supp., amended 1976, HB 3940)

Georgia	1975	GA. CODE ANN. sec. 74-111 (reporting); sec. 99-4301-4304 (confidentiality of records) (1976 Cum. Supp.)
Hawaii	1975	HAWAII REV. STAT. sec. 350-1-350-5; 346-1 (def.) (1975 Supp.)
Idaho	1973	IDAHO CODE sec. 16-1601-1629; (1976 Cum. Supp.)
Illinois	1975	ILL. STAT. ANN. tit. 23, sec. 2051-2061 (Smith-Hurd, 1975 Cum. Supp.)
Indiana	1971	BURNS IND. STATS. ANN. (code edition) sec. 12-3-4.1-1 - 12-3-4.1-6 (1976 Cum. Supp.)
Iowa	1974	IOWA CODE ANN. sec. 235A.1-235A.24; 232.2(15) (def. of neglect; not reportable) (1975 Cum. Supp.)
Kansas	1975	KAN. STAT. ANN. sec. 38-716-38-724 (1975 Cum. Supp.)
Kentucky	1972	KY. REV. STAT. ANN. sec. 199.335; 199.990 (7 & 8) (penalties); 199.011 (6) (def.: "abused or neglected child") (Baldwin's 1975 Repl. Vol.)
Louisiana	1975	LA. REV. STAT. ANN. sec. R.S.: 14:403 (A-1); 46:52(16); 46:65 (West's, 1975 Cum. Supp.)
Maine	1975	ME. REV. STAT. ANN. tit. 22, sec. 3851-3860 (1975 Cum. Supp.)
Maryland	1975	MD. ANN. CODE art. 27, sec. 35A(a-i) (1976 Cum. Supp.)
Massachusetts	1973	MASS. ANN. LAWS ch. 119, sec. 51A-G (1975 Cum. Supp.)

Michigan	1975	MICH. STATS. ANN. sec. 25.248(1) - 25.248(16) (1976 Cum. Supp.)
Minnesota	1975	MINN. STAT. ANN. sec. 626.556(1) - 626.556(11); 260.015(10) (definition) (1975 Cum. Supp.)
Mississippi	1975	MISS. CODE sec. 14.21.5 - 14.21.27 (1972 Annotation, 1976 Cum. Supp.)
Missouri	1975	MO. ANN. STAT. sec. 210.110 - 210.165 (Vernon's, 1975 Cum. Supp.)
Montana	1974	MONT. REV. CODES sec. 10.1300 - 10-1322 (1975 Cum. Supp.)
Nebraska	1975	NEB. REV. STAT. sec. 28-1501-1506 (1974 Supp., added by LB 20, Acts of 1975)
Nevada	1975	NEV. REV. STAT. sec. 200.501-508; 432.090-432.130 (1975 Supp.)
New Hampshire	1975	N.H. REV. STAT. ANN. sec. 169:37 - 45 (1973 Supp.)
New Jersey	1974	N.J. STAT. ANN. sec. 9:6-8.8-8.32 (1975 Cum. Supp.)
New Mexico	1975	N.M. STAT. ANN., sec. 13-14-1 - 13-14-3; 13-14-14.1 - 13-14-33; 13-14-25(G), 13-14-43 (1976 Supp.)
New York	1974	N.Y. FAM. CT. ACT tit. 6, sec. 411-428; art. 10, sec. 1012 (McKinny Supp., 1975, as amended by S.10034, 1976)
North Carolina	1975	N.C. GEN. STAT. sec. 110-115 - 110-122; 8-53.1; 7A-278 (1975 Cum. Supp.)
North Dakota	1975	N.D. CENT. CODE sec. 50-25.1-01 - 50-25. 1-14; 27-20.02(5) (1975 Cum. Supp.)

Ohio	1975	OHIO REV. CODE ANN. sec. 2151.031; 04; 2151.05; 2919.22; 2151.421; 2151.27; 2151.31; 2151.33; 2151.53; 2151.281; 2151.351 (Page's 1975 Cum. Supp.)
Oklahoma	1975	OKLA. STAT. ANN. tit. 21, sec. 845-848 (1975 Cum. Supp.)
Oregon	1975	ORE. REV. STAT. sec. 418.740 - 775; 990 146.750, 760, 780 (1975 Supp.)
Pennsylvania	1975	PURDON'S PA. STAT. ANN. tit. 11, sec. 2101 - 2126 (1975 Cum. Supp., as amended by SB 25, Acts of 1975, No. 124)
Rhode Island	1975	R.I. GEN. LAWS sec. 11-9-3; 11-9-5; 11-9-5.1; 11-9-5.2; 14-1-3(H); 40-11-1 - 40-11-16 (1975 Supp., as amended by HB 7525, 1976)
South Carolina	1974	S.C. CODE ANN. sec. 15-1103(11) (neglected child); 20-310 - 20-310.6; 31-61 (abandoned or abused child) (1975 Cum Supp.)
South Dakota	1975	S.D. COMP. LAWS ANN. 26-8-6; 26-10-1; 26-10-15 (1976 Supp.)
Tennessee	1975	TENN. CODE ANN. ch. 37, sec. 1201 - 1212; 101 (def.) (1975 Cum. Supp.)
Texas	1975	VERNON'S TEX. CODES ANN. Family Code; sec. 34.01-34.08; 35.04; Civil Code: art. 2330 (1975 Cum. Supp.)
Utah	1975	UTAH CODE ANN. sec. 55-16-1-55-16-7 (1975 Supp.)
Vermont	1974	VT. STAT. ANN. tit. 13, sec. 1351-1356 (1976 Cum. Supp., as amended by S.148, 1976)
Virginia	1975	CODE OF VA. tit. 63.1, sec. 248.1-248.17 (1950 ed., 1976 Supp., as amended 1976)

Virgin Islands	1970	VIRG. IS. CODE ANN. tit. 19, sec. 171 - 176 (1975 Cum. Supp.)
Washington	1975	WASH. REV. CODE ANN. sec. 26.4-1.010 -26.44.110; 26.37.020; 26.37.040 (1975 Supp.) WASH. ADMIN. CODE sec. 388-16-500-388-16-545 (1975 Supp., as amended by ch. 217, Laws of 1975)
West Virginia	1970	W. VA. CODE ch. 49, sec. 1-3; 6A-1 - 6A-4 (1976 Cum. Supp.)
Wisconsin	1975	WISC. STATS. ANN. sec. 48.981; 905.04 (4)(e) (1975 Cum. Supp.)
Wyoming	1971	WYO. STAT. ANN. sec. 14-28.7-14-28.13 (1975 Cum. Supp.)

APPENDIX M

FOOTNOTE 70 TO CANRIS: AN INVASION OF PRIVACY? AN UNPUBLISHED PAPER BY STUART R. SCHWARTZ, A LAW STUDENT AT SOUTHERN METHODIST UNIVERSITY SCHOOL OF LAW

Footnote 70 to *CANRIS: AN INVASION OF PRIVACY?*, an unpublished paper by Stuart R. Schwartz, a law student at Southern Methodist University School of Law

70. The Department of Child Welfare handles a typical neglect and abuse report in the following manner:

> Reports of children in need of protection are first received by a case intake worker who is responsible for gathering all information from the complaintant-reporter. In Texas any person having cause to believe that abuse or neglect has occurred is required to report, *Tex. Fam. Code Ann.* § 34.01 (Vernon 1975), and failure to do so constitutes a Class B misdemeanor. *Id.* at §34.07 (Vernon Supp. 1978). The complaintant may, however, remain anonymous, *Id* at § 34.02(d) (Vernon, 1975), and, in any event, his identity will not revealed to the parents. Social Service Handbook §7222 (Jan. 1978).

The information is transferred to a CANRIS report form where the case worker records the child's name, as well as the name of his siblings and parents, states the nature of the report (either child abuse or neglect or both) and decides on the role each individual played in the reported offense. The worker has a choice of selecting from five different role classifications: victim, perpetrator, unknown, uncertain, or not involved. *Id.*, Form 2202-A Children's Protective Services Intake and CANRIS report, Parts 1 & 2, with Instructions (April, 1976).

Thereafter, a report and inquiry is made to CANRIS to determine whether any previous report exists on any or all of the family members reported. *Id.* at §7222 (Jan. 1978). An inquiry cannot be made to CANRIS unless a report is also made.

Furthermore, the worker himself does not have access to the CANRIS terminal. Instead, he must contact the nearest designated telecommunications terminal and have an authorized CANRIS operator make the inquiry for him. *Id.* at §7222.1 (Jan. 1978). From this inquiry, the computer prints a feedback report which is then mailed to and retained by the worker for future updating, correcting or filing. *Id.*

After the initial investigation, the case worker amends and updates his prior determination of individual involvement by choosing from five "dispositions" classifications: Validated, Invalidated, Uncertain, Potential Identified, or Family Moved. Id at §7223 (Jan. 1978). If the report is found invalid, the CANRIS report will be automatically expunged from the computer files six months after the date the report is finalized. Otherwise, the report is not removed until the youngest child reported in the case reaches age eighteen. *Id* at § 7222-1 (Jan. 1978).

The Susman and Cohen Model Act is much more explicit in its handling of incoming reports. The Model Act calls for the use of only three role labels: Suspected, Unfounded, or Indicated. All initial reports must be labelled Suspected and can be maintained no longer than sixty days. On or before the expiration date, they must be converted into either Unfounded or Indicated reports. Indicated reports are maintained on the register only if accompanied with supplemental information available to the agency. If insufficient evidence exists, the report is classified as Unfounded and any information gained from such reports is immediately expunged. The Model Act calls for expungement of Indicated reports seven years from the date the report was received. *A. susman & S. Cohen, Reporting Child Abuse and Neglect.* 7 (1975).

APPENDIX N

SOCIAL SERVICES HANDBOOK REGULATIONS

SSHR 53/OCTOBER 1975
§1722 — Protective Services
SSHR 57/DECEMBER 1975
§7311 — Supervisory Approval for Removal of Child
§7312 — Emergency Removal
§7330 — Work with the Court
§7338 — Termination of the Parent-Child Relationship
§7338.2 — Involuntary Termination

1722 Protective Services

In addition to the general guidelines in Items 1720 and 1721, regarding AFDC recipients receiving social services, the following guidelines apply to protective services cases:

1. Form 206, Intake Report Children and Protective Services, must be completed for every protective services report or complaint received by the Department to record and document the report or complaint.

2. If an investigation is not made immediately upon receipt of a complaint or report, document why in the narrative.

3. Events of the investigation and findings should be thoroughly documented in the narrative at the time of their occurrence. Care should be taken to differentiate between facts which can be documented and impressions or assessments which are not proven. Narrative recording should include:

   a. The clarification of the complaint (see Item 7221),

   b. The circumstances of the investigation (see Item 7223),

   c. Assessments, interpretations, and the validity or invalidity of abuse, neglect etc. (see Item 7228),

   d. Case planning, to include the reasoning behind the decision to leave a child with his family or to remove a child from his home (see Item 7223),

   e. Case activity necessary to account for the Department's intervention in the case (see Item 7223), and

f. Documentation (by recording in the narrative or filing medical statements in the record) of medical and psychological/psychiatric exam or why these exams were not obtained (see Item 7223).

4. If work with the family is to continue after the investigation, forms and narrative recording must be kept current. Case narrative recording should give a complete picture of the family, of case action and of the continuing need for protective services. The validity of the events not recorded in the case record at the time of their occurrence may be questioned by the court. The narrative should include:

a. Why the case is open,

b. What the Department is trying to accomplish with the family and child (case plan) (see Item 7231 for details of the case plan),

c. Family action in response to the mutually determined case plan,

d. The services given to the child and family, including frequency of worker contact with family and child,

e. Periodic evaluations of accomplishments and unachieved objectives,

f. Why the child is remaining in the home or being placed out of the home,

g. If the child is removed from the home,

(1) Legal base for removal, to include as appropriate:

(a) The "reasonable cause" of the worker's action in emergency removal (see Item 7312),

(b) Worker's findings that substantiate the existence of one or more conditions under termination of the parent-child relationship (see Item 7338),

(c) The circumstances of the action taken in securing an affidavit of relinquishment (see Item 7338.3),

(d) Reasons for and meeting of criteria for voluntary placement (see Item 7511),

(2) Supervisory approval for removal,

(3) Parent's participation in plans for the child,

(4) the events leading to and the circumtances of the removal,

(5) Recommendation to the court and the court's response to the Department's petition or report and the basis for the court's response, especially if it differs from the Department's request, and

(6) The Department shall obtain from the court a written copy of the court order giving responsibility for placement and care of the child to the Department. Copies of the petition, witnesses' reports or statements, court orders, birth certificate or other legal documents must be filed in the child's case record.

5. The CANRIS reporting (Form 202), the social services management reporting system (Forms 281 and 282) and case narrative recording (indicating continuing need and therefore eligibility) must be kept current on cases to substantiate and document the Department's requests for Federal and State funding for protective services.

7311 Supervisory Approval for Removal of Child

No child should be removed from his home by the Department without the approval of a supervisor who has a graduate social work education or who has been delegated the authority to make this decision by a staff member with a graduate social work education.

7312 Emergency Removal

When a decision is made to remove the child on an emergency basis before a court order can be obtained and without consent or knowledge of the parents, emergency removal is made possible by the Texas Family Code, which states that, "An authorized representative of the State Department of Public Welfare, a law enforcement officer or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his health or physical safety and deliver him to any court having jurisdiction. . . . The child shall be delivered immediately to the court." TEX. FAM. CODE §17.01. No child shall be removed from his home without supervisory approval. If no supervisor is available, approval at the program director level is required. When possible, a law enforcement officer should accompany the worker when he removes the child from his home. When emergency removal is necessary, the rights of the parents are respected.

The Texas Family code stipulates that the worker may remove a child without civil liability if that worker has reasonable cause, at the time possession was taken, to believe there was an immediate danger to the physical safety or emotional well-being of the child. See TEX. FAM. CODE § 17.09. Concrete facts should exist to illustrate and support the worker's beliefs.

After emergency removal, the worker will ". . .file a petition in the court immediately on delivery of the child to the court, and a hearing shall be held to provide for the temporary care or protection of the child." This hearing may be held without notice. See TEX. FAM CODE § 17.02, 17.03.

In accordance with § 17.04 of the Texas Family Code, the court may decide that the child is in need of immediate protection and make any appropriate order for the care and protection of the child.

7330 Work with the Court

When the determination has been made that the Department will ask the court for managing conservatorship of a child, a petition for a suit affecting the parent-child relationship is prepared and filed, usually by the district or county attorney with the assistance of the worker. If the county or district attorney refuses to file a petition, the regional attorney may be consulted for assistance in developing the case, so that, if appropriate, the county or district attorney can be approached with a request to reconsider.

If the Department does not have sufficient time to seek court action prior to emergency removal of a child from his home, the worker will deliver the child to the court and file a petition at that time as outlined in Item 7312, Emergency Removal. The contents of the petition are

stated in Section 11.08 of the Texas Family Code. In its petitions, the Department should be named as requesting conservatorship and should be represented by the unit supervisor or program director who should sign the petition.

The court sets a date for the conservatorship hearing and may appoint an attorney and/or guardian ad litem to represent the child. TEX. FAM. CODE § 11.10. In a suit to terminate the parent-child relationship, the court must appoint a guardian ad litem to represent the interests of the child. The court issues citations and arranges for them to be served from information supplied by the worker. The worker should seek to know and anticipate the specific practices and preferences for forms and additional requirements in the court with which he works in order to expeditiously meet these requests and obtain a ruling on the case.

The court is entitled to the Department's total case and fiscal records on families and children the Department is serving who are under the continuing jurisdiction of the court.

7338 Termination of the Parent-Child Relationship

chapter 15 of the Texas Family code provides three procedures for termination of the parent-child relationship:

1. Termination when the parent is the petitioner;
2. Involuntary termination; and
3. Affidavit of voluntary relinquishment of parental rights.

Voluntary or involuntary termination is incomplete without judicial action. A decree terminating the parent-child relationship divests the parent and the

child of all legal rights, privileges, duties and powers with respect to each other except that the child retains the right to inherit from the parents unless the court otherwise provides. TEX. FAM. CODE § 15.07.

7338.2 Involuntary Termination

A petition by the Department requesting termination of the parent-child relationship may be granted if the court finds termination is in the best interest of the child and the parent has: (TEX. FAM. CODE § 15.02)

1. Voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return, or
2. Voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months, or
3. Voluntarily left the child alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months, or
4. Knowingly placed or allowed the child to remain in conditions or surroundings which endanger his physical or emotional well-being, or
5. Failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition, or
6. Abandoned the child without identifying the child or furnishing means of identification, and child's identity cannot be ascertained by the exercise of reasonable diligence, or

7. Voluntarily and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during the pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

8. Refused to submit to a reasonable and lawful order of a court under Section 34.05 of the Texas Family code (relating to an investigaton of child abuse), or

9. Has been the major cause of:

   a. The failure of the child to be enrolled in school as required by the Texas Education Code; or

   b. The child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

10. Executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights.

A petition to terminate the parent-child relationship may be filed any time after the first trimester of the mother's pregnancy. No hearing may be held and no order may be filed other than temporary orders until the child is at least five days old. TEX. FAM. CODE 15.021.